Alternative Dispute Resolution

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Overview

- Introduction
- History
- Spectrum of ADR tools
- Interest Based Negotiation
- Developments in the Air Force

Introduction

- Old way...
- New way....

History

- Legislative
- Departmental
- Where is the Air Force?

ADR SPECTRUM

CONTROL

Unassisted Negotiation	Assisted Negotiation		Adjudication
	Process Assistance	Outcome Prediction	Court
	Convening	Early Neutral Evaluation	Agency (ALJ)
	Facilitation	Fact Finding	
	Mediation	Non-binding Arbitration	Binding Arbitration
		Summary Jury Trial	
	Mini-Trial Settlement Judge Superfund Allocation		
Non-Binding Outcome			**Binding Outcome**

Parties

Neutral

Interest Based Negotiation

Overview

- Definition
- Why we want to do it
- 4 Principles
- BATNA

What is it?

Interest Based Negotiation

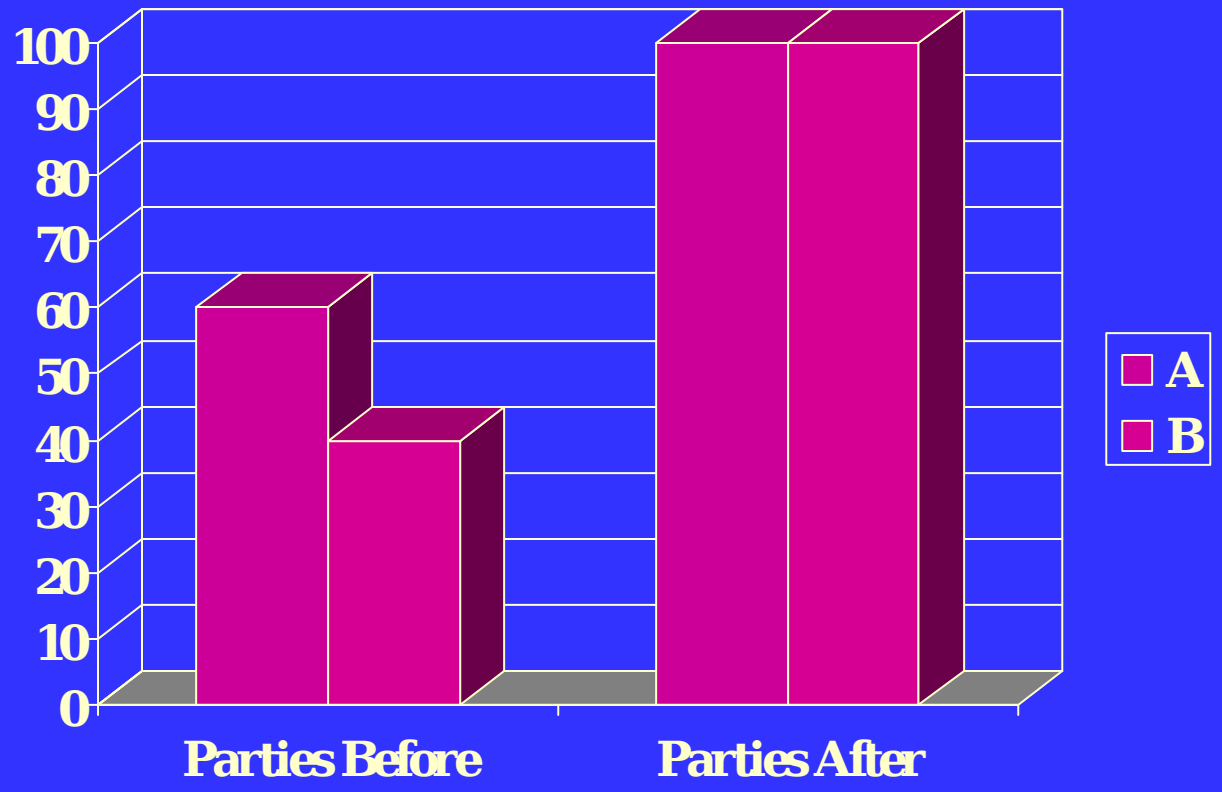
A type of Negotiation Style working toward a win-win resolution; “expanding the pie” so that both parties may be able to have their interests met.

Interest Based Negotiation

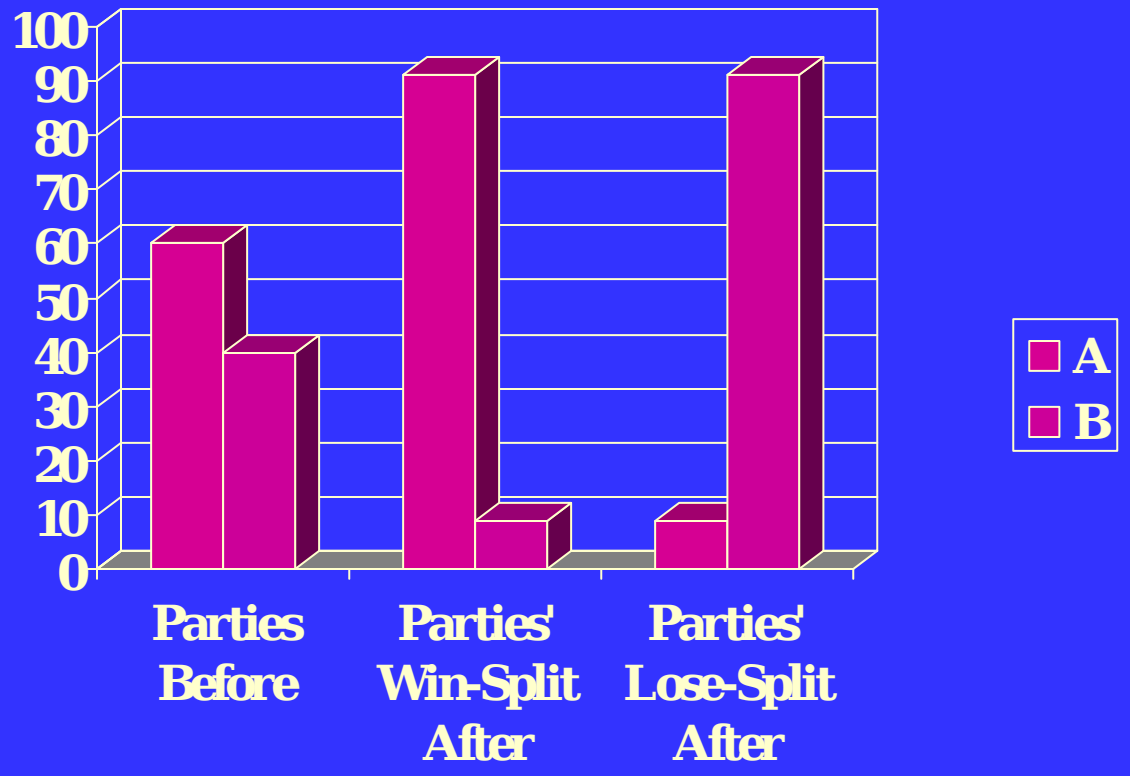
Compared to Positional Negotiation

A type of Negotiation Style based upon a win-lose resolution; “fixed-pie ” concept so that each side’s gain is directly proportionate to the other’s loss.

Interest Based Negotiation



Positional Negotiation



Interest Based Negotiation

Why Bother?

- Will there be a continuing relationship?
- Do you want an agreement which satisfies both parties
- Do you want a *process* satisfying to both parties?

The Four Principles

- Separate the People from the Problem
- Focus on Interests not Positions
- Invent Options for Mutual Gain
- Insist on Objective Criteria

Separating People & Problem

- Negotiators care about the problem & the relationship
- People & Problems get entangled by
  - Perceptions
  - Emotions
  - Communications
- But we need to separate these, and fix the people problem

Distinguishing Positions from Interests

- Positions are pre-determined *outcomes*
- Interests are your *needs to be satisfied*

Distinguishing Positions from Interests

Positions

- solution(s) to problem
- specific and definite
- basis for argument
- require justification
- end discussion

Interests

- why a particular solution is preferred
- reasons underlying positions
- require explanation not justification
- start discussion

Options for Mutual Gain

- Recognize there can be > 1 option
- Recognize the obstacles that restrict option development
- Brainstorm options

Options for Mutual Gain

Barriers that restrict

- Premature Judgment
- Searching for the Single Answer
- Assuming a “fixed pie”
- Solving their problem is *their* problem

Options for Mutual Gain

Brainstorming Options

- Must separate inventing from deciding
- Broaden your options
- Look for the mutual gain
- Make their decision easy

Objective Criteria

When You're Almost There . . .
Avoid a Contest of Wills

- Agreement to use Objective Criteria
- Agree on which criteria to use
- *THEN* apply the standard to the dispute

Objective Criteria

- “Others in the industry do…”
- “The last time this sort of thing happened we…” (precedent)
- “The standard contract says…”
- “If it were you would you…?” (reciprocity)

BATNA

“If we don’t agree, I can always…”

BATNA

But where does it come from?

Prioritizing your ***Interests***

Interest Based Negotiation

Conclusion

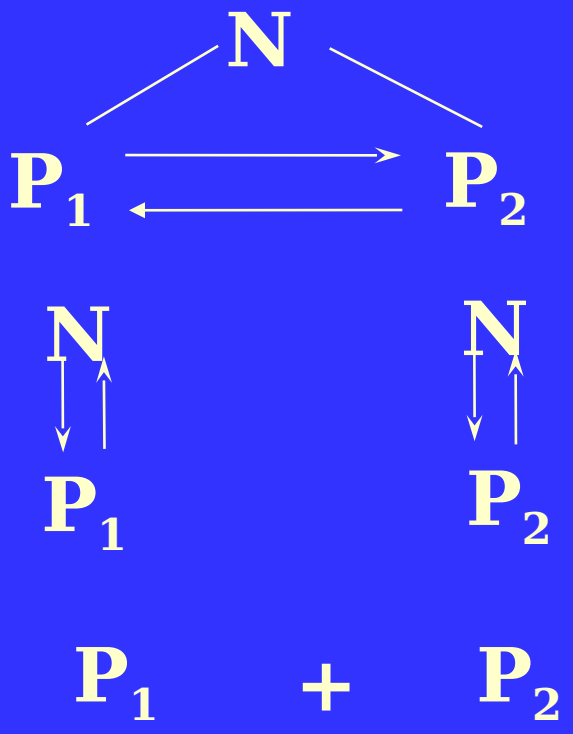
- Understanding Interest Based Negotiation
- Understanding the 4 Principles
- BATNA

Mediation

<u>Process Dynamics</u>:
Third-party assisted negotiations

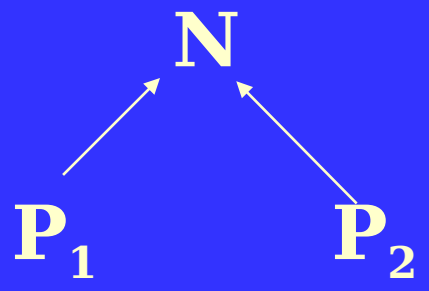
<u>Unique Feature</u>:
Confidential caucuses

<u>Decisionmakers</u>:
The parties



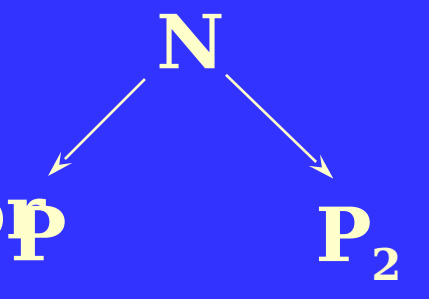
Early Neutral Evaluation

Process Dynamics:
Third-party assistance with negotiations



Unique Feature:

- **Evaluation of likely outcome**
- **Assessment of facts and/or methodology**



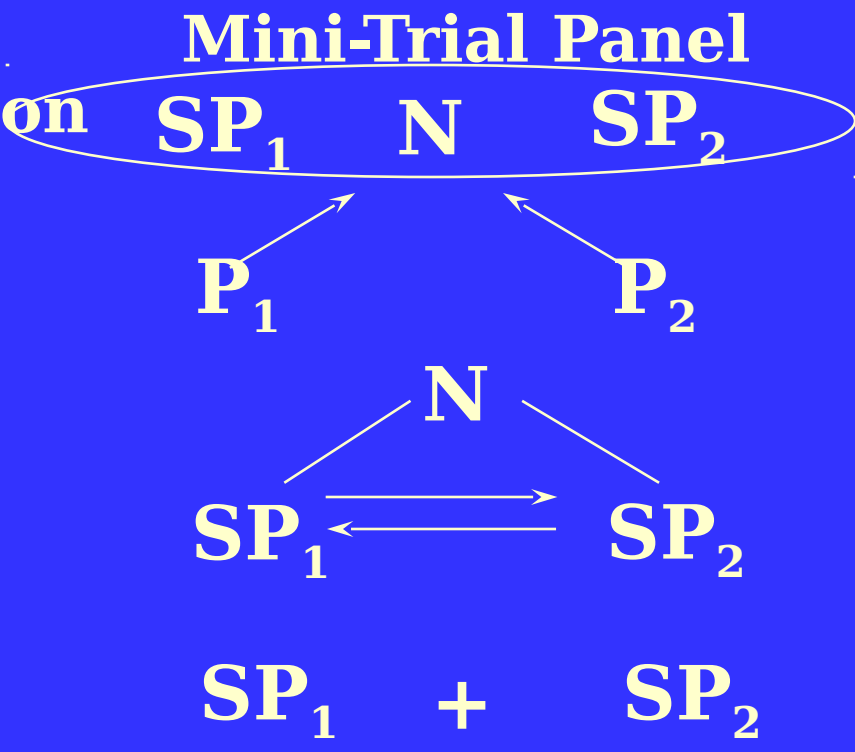
Decisionmakers:
The parties

Mini-Trial

Process Dynamics:
Hybrid settlement negotiation process combining senior-decisionmakers with mediation

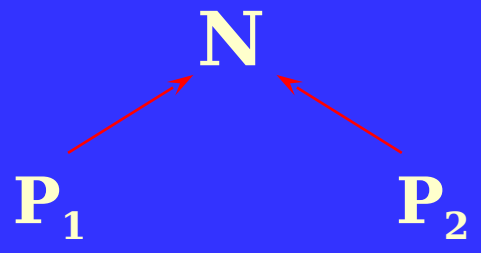
Unique Feature:
Involvement of senior-decisionmakers

Decisionmakers:
The parties



Arbitration

Process Dynamics:
Case presented to third-party in an expedited manner and third-party makes a decision



Unique Feature:
Potentially binding decision

High-low Award
Final-offer Award

Decisionmakers:
The Arbitrator

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The Air Force ADR Program

AFPD 51-12

AFPD 51-12

- Air Force Policy is to use ADR to maximum extent practical and appropriate
- ADR Advocates
- Overall ADR Five Year Plan is being developed

AFPD 51-12

Functional ADR Plans

- Acquisition
- Workplace Disputes
- Environmental

Alternate Dispute Resolution

Conclusion